

**MONTANA FIFTH JUDICIAL DISTRICT COURT
LOCAL RULES**

1. LAW & MOTION:

The typical schedule is:

Monday - Madison County
Tuesday & Thursday - Beaverhead County
Wednesday - Jefferson County

Counsel and parties should set and confirm hearing dates with the Clerk of Court. In the event counsel or parties encounter extreme difficulties because of the date selected, they should consult with the opponent and then advise the Court by stipulation or motion supported by brief and affidavit stating efforts to contact the opponent and the opponent's position.

2. PLEADINGS & MOTIONS:

- 2.1 Briefs shall not exceed 20 pages without leave of the Court for good cause demonstrated.
- 2.2 The Clerk shall file documents other than a complaint or first amended complaint only when accompanied by proper documentation demonstrating service. Other documents shall be returned forthwith and without further order.
- 2.3 A demand for jury trial shall be included in the caption of the complaint or answer.
- 2.4 When an issue is fully submitted and ready for a decision from the Court, the moving party should file a Notice to bring the matter to the Judge's attention in the event a decision has not been rendered within 30 days.

3. ATTORNEYS:

- 3.1 *Pro Hac Vice* - An attorney seeking to appear *pro hac vice* shall file a motion and proposed order accompanied by a copy of the State Bar of Montana *Pro Hac Vice* Application and confirmation correspondence from the Bar Admissions Administrator.
- 3.2 Release of Counsel of Record on Notice. After final disposition and the time for appeal has expired, all counsel shall be relieved of their duties as counsel of record provided they first file a Notice of Termination with the Clerk of Court and serve the same on opposing counsel and their client. Thereafter, notice must be served on the adverse party as provided in Rule 4(D), MRCP.

4. NO APPEARANCE BY PARTY REQUIRED:

No personal appearance by the parties shall be required in the following cases and under the circumstances specified:

- 1. Quiet Title Actions - Where an affidavit of the salient facts has been filed with the Court and the opponents are in default.

2. Probate of Estates - Where proper documentation has been filed and there is no objection from any interested party.

3. Dissolutions - a) there is filed a verified petition and/or uncontroverted affidavit including proof of service upon the opposing party b) Where both parties are represented by counsel or there is written certification that the opposing party recognizes that counsel is appearing only for one party and nonetheless decides to proceed without counsel c) there are notarized written agreements on all issues and d) a completed Vital Statistics form, judgment fee and proposed order accompanies documents.

5. DEFAULT JUDGMENTS/WRITS OF EXECUTION:

- 5.1 Default judgments in collection actions shall include information on how interest has been calculated including, but not limited to, the interest rate, per diem and number of days accrued.
- 5.2 Writs of execution shall include information in accord with the format available at the Clerk of Court's office or in a substantially similar form.

6. GENERAL PROVISIONS

- 6.1 There shall be no food or drink in the Courtroom except for water in suitable containers.
- 6.2 Cell phones shall be allowed in the Courtroom only when turned off.
- 6.3 Persons who remove books or materials from a County Law Library shall leave a note on the shelf which contains the following information: 1) Name and address 2) title of book/material 3) removal date.

7. SETTLEMENT CONFERENCES OR MEDIATIONS:

Settlement Conference Required. In each civil case subject to a Scheduling Order a Settlement Conference is required before a case may be tried, unless a stipulation waiving settlement conference is executed by all counsel of record and any unrepresented party, is filed and is approved by the Court. Counsel who will try the case and all parties shall attend in person. Out-of-area corporations or insurance companies shall have a representative present. Participants must have settlement authority.

8. TRIALS:

- 8.1 Jury Instructions. The parties shall supply the Court with proposed jury instructions by electronic mail to dkaatz@mt.gov. Instructions shall be numbered and shall have the authority for the instruction printed at the bottom or on a second page.
- 8.2 All exhibits shall be pre-marked and exchanged before hearings or trial. Plaintiff/Petitioner shall mark exhibits numerically and Defendant/Respondent shall mark exhibits alphabetically.
- 8.3 For bench trials the parties shall supply the Court with proposed findings and conclusions by electronic mail to dkaatz@mt.gov.

9. WEAPONS:

Only on-duty law enforcement officers or court security personnel shall possess firearms, knives, or other weapons in the Courtroom. Anyone wishing to enter the courtroom may be required to submit to a search of their person or belongings by security personnel.

10. CHILD SUPPORT GUIDELINES REQUIREMENTS:

In any case in which the Court will be requested to issue an order setting or modifying child support, the parent's financial affidavits and uniform child support guidelines worksheets shall be filed with the Court before entry of any child support order.

11. PARENTING PLAN GUIDELINES:

11.1 A powerful cause of stress and suffering for children is not simply the divorce itself, but continuing conflict between the parents before, during and after the divorce. The parents should agree on a parenting arrangement for frequent and meaningful contact with both parents with as little conflict as possible. The ideal arrangement is for the parents to develop their own parenting plan. The following guidelines will help the parents in knowing what the presiding judge in the Fifth Judicial District believes is generally reasonable, unless special circumstances require a different arrangement. In the event the parenting plan becomes an issue in court, the judge will order whatever parenting plan best meets the needs of the children. Parents may be required to attend information sessions on the impact of their divorce upon children.

Parents always should avoid speaking negatively about the other and should firmly discourage such conduct by others. Each parent should encourage the children to respect the other. Children should never be used by one parent to spy on the other. The basic rules of conduct and discipline established by the custodial parent should be the minimum standard for both parents and step-parents and should be consistently enforced by all so that the children do not receive mixed signals.

Children benefit from continued contact with relatives and friends on both sides of the family. Such relationships should be protected and encouraged. Relatives must avoid being critical of either parent in the presence of the children. In Montana, grandparents have a legal right to reasonable visitation. Usually the children will visit with the paternal relatives during times the children are with their father and with the maternal relatives during times they are with their mother.

Where both parents resided in the same community at the time of separation and then one parent left the area, the Court may, in a proper case, consider imposing the travel costs on the parent who moved.

11.2 **Parental Communication.** Parents should always keep each other advised of their home and work addresses and telephone numbers. As far as possible, all communication concerning the children should be conducted between the parents themselves at their residences and not at their places of employment.

- 11.3 **Grade Reports and Medical Information.** Each parent shall provide the other parent with grade reports and notices from school as they are received. School(s) shall be notified of the split households and advised to send children's school documents to each parent. Each parent shall immediately notify the other of any medical emergencies or serious illnesses of the children. Each parent shall notify the other parent of all events involving parental participation. If a child is taking medication, each parent shall provide a sufficient amount and instructions during time with the other parent.
- 11.4 **Parenting Time Clothing.** Each parent shall send an appropriate supply of clothing with the children for their time with the other parent. These clothes are the children's clothes, and shall be returned clean (when reasonably possible) with the children. Each parent shall advise, as far in advance as possible, of any special activities so that the appropriate clothing may be sent.
- 11.5 **Withholding Support or Scheduled Parenting Time.** Neither parenting time nor child support shall be withheld because of the other parent's failure to comply with a court order. Children have a right both to support and time with each parent, neither of which is dependent upon the other. No support does not mean no parenting time and no parenting time does not mean no support. If there is a violation of either parenting time or a support order, the exclusive remedy is to apply to the Court for sanctions.
- 11.6 **Adjustments in the Parenting Time Schedule.** Parents should modify parenting time when family necessities, illnesses, or commitments reasonably require. The requesting parent shall give as much notice as circumstances permit.
- 11.7 **Each Parent's Vacation.** Unless otherwise specified in a court order or agreed each parent is entitled to a vacation with the children, usually equal to the vacation time spent with the other parent.
- 11.8 **Insurance Forms.** The parent who has medical insurance coverage for the children shall supply insurance forms and a list of approved health care providers in the area where the other parent is residing. A parent who, except in an emergency, takes the children to an unapproved provider should pay the additional cost created. When there is an obligation to pay medical expenses, the parent responsible shall be promptly furnished with the bill by the other. The parents shall cooperate in submitting bills to insurance carriers. The parent responsible for paying the balance of the bill shall make arrangements directly with the provider and shall inform the other parent of such arrangements. Insurance refunds should be delivered promptly to the parent who is entitled to it.
- 11.9 **Missed Parenting Time.** Each parent shall notify the other parent when a scheduled parenting time cannot occur. Missed parenting time shall not be replaced unless mutually agreed upon by the parties.
- 11.10 **Parenting Time with Siblings.** Unless a court order or circumstances such as age, illness, or the particular event suggest otherwise, all the children shall participate in parenting time.

- 11.11 **Telephone Communication.** Telephone calls between parent and child shall be liberally permitted at all reasonable hours and at the expense of the calling parent. The children may call at the long distance cost of the parent called. A parent shall not refuse to answer the telephone or turn off the telephone to deny the other parent telephone contact. Messages left for the child should be returned promptly. Parents should agree on a specified time for calls so that the children will be available.
- 11.12 **Mail Contact.** Parents have an unrestricted right to send cards, letters, and packages to their children. The children also have the same right with their parents.
- 11.13 **Privacy of Residence.** A parent may not enter the residence of the other except by invitation. Parents should refrain from surprise visits to the other parent's home.
- 11.14 **Infants & Toddlers.** Infants (children under eighteen months of age) and toddlers (eighteen months to three years) have a great need for continuous contact with parents who provide a sense of security, nurturing, and predictability.
- 11.15 **Children in Day Care.** In families where a child has been in day care prior to the parental separation, the child may be able to tolerate flexible visits earlier because the child is more accustomed to separations from both parents. The parent who exercises non-residential parenting time with a child under five should be present the whole time. If the parent cannot be with the child personally, the child should be returned to the other parent.
- 11.16 **Day Care Providers.** When parents reside in the same community, they should use the same day care provider. To the extent possible the parents should rely on each other to care for the children when the other parent is unavailable.
- 11.17 **Special Circumstances.**
- a. **Substance Abuse.** Parenting time should not occur when the parent is abusing drugs/alcohol.
 - b. **Long Interruption of Contact.** In those situations where one parent has not had an ongoing relationship for an extended period, parenting time should begin with brief visits and a gradual transition to the parenting time schedules suggested in these guidelines.
 - c. **A Parent's New Relationship.** Parents should not expose the children too quickly to new relationships while they are still adjusting to the trauma of separation and divorce.
 - h. **Religion and Culture.** Parents should respect their children's needs to be raised in their faith and in keeping with their cultural heritage.

12. PARENTING TIME

- 12.1 **Weekends.** From Friday at 5:30 p.m. to Sunday at 7:00 p.m. (the starting and ending times may change by stipulation to fit the parents' schedules) or an equivalent period of time if the

parent exercising parenting time is not available on weekends and the child does not miss school. In addition, if time and distance allow, one or two midweek visits.

- 12.2 **Mother's Day-Father's Day.** The children are with their mother each Mother's Day weekend and with their father each Father's Day weekend.
- 12.3 **Extended Parenting Time.** One-half of the school summer vacation. If the child goes to summer school and it is impossible for the other parent to schedule parenting time other than during summer school, that parent may elect to take the time when the child is in summer school and transport the child to the summer school session at the child's school or an equivalent summer school session in that parent's community. Summer parenting time supersedes children's summer activities.
- 12.4 **Christmas Vacation.** One-half of the school Christmas vacation, a period which begins the evening the child is released from school and continues to the evening of the day before the child will return to school.
- 12.5 **Holidays.** Parents should alternate the following holiday weekends: Easter, Memorial Day, the 4th of July, Labor Day and Thanksgiving. Thanksgiving will begin on Wednesday evening and end on Sunday evening. Memorial Day and Labor Day Weekends will begin on Friday and end on Monday evening. Easter weekend begins on Thursday evening and ends on Sunday evening. The 4th of July, when it does not fall on a weekend, shall include the weekend closest to the 4th. Holiday weekends begin at 5:30 p.m. and end at 7 p.m. on the appropriate days.
- 12.6 **Children's Birthdays.** A child's birthday should be alternated annually between the parents. If the birthday falls on a school day, it should be celebrated 3 p.m. to 9 p.m.
- 12.7 **Conflicts Between Regular and Holiday Weekends.** When there is a conflict between a holiday weekend and a regular weekend parenting time, the holiday takes precedence. If a parent receives two consecutive weekends because of a holiday, alternating parenting time resumes the following weekend with the other parent.
- 12.8 **Parenting Time Before and During Vacations.** There is no alternate parenting time the weekend(s) before the beginning of a parent's summer vacation scheduled parenting time, regardless of whose weekend it may be. Similarly, alternating weekend parenting time(s) shall resume the second weekend after each period of summer vacation. Weekend parenting time "missed" during the summer vacation period will not be "made up."
- 12.9 **Notice of Canceled Parenting Time.** Whenever possible, the parent unable to exercise parenting time, shall give three days notice to the other.
- 12.10 **Pick Up and Return of Children.** The responsibility of picking up and returning the children should be shared. Both parents have an obligation to be punctual.
- 12.11 **Additional Parenting Time.** Parenting time should be liberal and flexible.

- 12.12 **Adolescents.** Parents should honestly and fairly consider their teenager's wishes regarding parenting time. Neither parent should attempt to pressure their teenager to make a parenting time decision adverse to the other parent. Teenagers should explain the reasons for their wishes directly to the affected parent without intervention by the other parent.

Dated: October 25, 2006.

/s/

LOREN TUCKER

District Judge